

## **APPENDIX A**

# **EMPLOYMENT DISPUTE RESOLUTION PLAN FOR FEDERAL PUBLIC DEFENDERS AND STAFF**

**ADOPTED JUNE 24, 1998  
BY THE  
JUDICIAL COUNCIL OF THE NINTH CIRCUIT  
Effective January 1, 1999  
Amended and Approved July 28, 1999;  
Amended November 2001 and July 2002**

# **MODEL EMPLOYMENT DISPUTE RESOLUTION PLAN**

## **CHAPTER I - GENERAL PROVISIONS**

### **§ 1 Preamble**

This Plan shall be known as the Model Employment Dispute Resolution Plan ("Model EDR Plan") for Federal Public Defenders and staff. It was adopted by the Ninth Circuit Judicial Council to provide rights and protections to employees of the Federal Public Defender Offices (FPDO) which are comparable to those provided to legislative branch employees under the Congressional Accountability Act of 1995.

Claims arising under Chapters II through VII of this Plan, or under Sections I through VII of the Model EEO Plan for FPDO, shall be treated in accordance with the procedures set forth in Chapter VIII of this Plan.

This Plan is to be implemented in the same manner as the Model EEO Plan. Any modification of this Plan must first be approved by the Ninth Circuit Judicial Council. A copy of this Plan and any subsequent modifications shall be filed with the Administrative Office. Each office shall annually submit a report on the implementation of this Plan to the Administrative Office for inclusion in the Director's Annual Report to the Judicial Conference.

Policies adopted by individual offices pertaining to adverse action or general grievance proceedings that do not invoke the rights and protections afforded under the Model EDR Plan are not affected by the Plan. Further, local policies relating to rights enumerated under the Plan that are not inconsistent with the rights and procedures established herein will not be affected by the Plan.

The Model EDR Plan is intended to be the exclusive remedy of the employee or applicant relating to rights enumerated under the Plan.

### **§ 2 Scope of coverage**

All staff employees and applicants for staff positions may seek timely redress of discrimination complaints through these procedures. These procedures, however, are not intended to be a replacement for the working relationship which must exist between supervisors and employees, nor are they intended to interfere with the administrative process of the courts.

These procedures also apply to Federal Public Defenders and to those applicants to the position of Federal Public Defender who believe that they were rejected for employment based upon unlawful discrimination. These procedures for Federal Public Defenders are promulgated by the United States Court of Appeals pursuant to its authority under 18 U.S.C. § 3006(g)(2)(A) to appoint and remove Federal Public Defenders.

Complaint procedures for Assistant Federal Public Defenders and other employees in the office of the Federal Public Defender (“support staff employees”) differ somewhat from those applicable to the Federal Public Defender himself or herself. These distinctions are set forth in the appropriate sections of this Appendix.

### **§ 3 Definitions**

For purposes of this Plan--

- A.** The term "employee" includes all individuals listed in Section 2 of this Chapter, as well as applicants for employment and former employees, except as provided below. The term “employee” does not include unpaid externs, private attorneys who apply to represent indigent defendants under the Criminal Justice Act, independent contractors (e.g., contract interpreters, retained experts), volunteer counselors or mediators, or other individuals who are not employees of an “employing office” as that term is defined below.
- B.** The term "employing office" includes all offices of the federal public defender.
- C.** The term "court" refers to the Ninth Circuit Court of Appeals, and to the Standing Committee on Federal Public Defenders (FPD Standing Committee) to the extent that the Ninth Circuit Court of Appeals has delegated authority and responsibility to that committee.

## **CHAPTER II - EQUAL EMPLOYMENT OPPORTUNITY AND ANTI-DISCRIMINATION RIGHTS**

**§ 1 General -** Discrimination against employees based on race, color, religion, sex (including sexual harassment), national origin, age (at least 40 years of age at the time of the alleged discrimination), disability and sexual orientation is prohibited. The rights and protections of Sections I through VII of the Model Equal Employment Opportunity Plan for Federal Public Defenders and Staff shall also apply to employees.

**§ 2 Definition -** The term "disability" means--

- A.** a physical or mental impairment that substantially limits one or more of the major life activities of an employee,
- B.** a record of such an impairment, or
- C.** being regarded as having such an impairment.

*See 42 U.S.C. § 12102(2).*

### CHAPTER III - FAMILY AND MEDICAL LEAVE RIGHTS

- § 1 **General** - Title II of the Family and Medical Leave Act of 1993, 29 U.S.C. § 2611, applies to employees in the manner prescribed in Volume I-C, Chapter X, Subchapter 1630.1, Section R, of the *Guide to Judiciary Policies and Procedures*.

### CHAPTER IV - WORKER ADJUSTMENT AND RETRAINING NOTIFICATION RIGHTS

- § 1 **General** - No “employing office closing” or “mass layoff” (as defined in Section 2 of this Chapter) may occur until the end of a 60-day period after the employing office serves written notice of such prospective closing or layoff to employees who will be affected. This provision shall not apply to an employing office closing or mass layoff that results from the absence of appropriated funds.

§ 2 **Definitions**

- A. The term "employing office closing" means the permanent or temporary shutdown of a single site of employment if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding any part-time employees.
- B. The term "mass layoff" means a reduction in force which--
1. is not the result of an employing office closing; and
  2. results in an employment loss at the single site of employment during any 30-day period for
    - a. (1) at least 33 percent of the employees (excluding any part-time employees); and
    - (2) at least 50 employees (excluding any part-time employees); or
    - b. at least 500 employees (excluding any part-time employees).

*See 29 U.S.C. § 2101.*

## **CHAPTER V - EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES**

- § 1 General** - An FPDO shall not discriminate against an eligible employee or deny an eligible employee reemployment rights or benefits under the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 et seq.

## **CHAPTER VI - OCCUPATIONAL SAFETY AND HEALTH PROTECTIONS**

- § 1 General** - Each FPDO shall provide to its employees a place of employment which is free from recognized hazards that cause or are likely to cause death or serious physical harm to employees. Complaints which seek a remedy that is exclusively within the jurisdiction of the General Services Administration (“GSA”) or the United States Postal Service (“USPS”) to provide are not cognizable under this Plan; such requests should be filed directly with GSA or the USPS as appropriate.
- § 2 FPDO program requirements** - Each FPDO shall implement a program to achieve the protections set forth in Section 1 of this Chapter.

## **CHAPTER VII - POLYGRAPH TESTS**

- § 1 General** - No employee may be required to take a polygraph test.

## **CHAPTER VIII - DISPUTE RESOLUTION PROCEDURES**

- § 1 General procedure for consideration of alleged violations** - An employee who claims a denial of the rights granted under Chapters II through VII of this Plan or under Sections I through VII of the Model EEO Plan for Federal Public Defenders and Staff or who claims a violation of the prohibition against retaliation set forth in § 2A, shall seek resolution of such claims through the procedures of this Chapter. Generally, the procedural process consists of--
- A.** counseling and mediation;
  - B.** hearing before the FPD Standing Committee; and

- C. review of the hearing decision by the Executive Committee of the Judicial Council of the Ninth Circuit.

## § 2 General provisions and protections

- A. **Prohibition against retaliation** - Every complainant under this Plan has the right to be free from retaliation, coercion, or interference because of filing a complaint pursuant to this Plan. Likewise, any person who participates in the filing or processing of a complaint, such as an employment dispute resolution coordinator, mediator, witness, representative, or co-worker, is also entitled to freedom from retaliation.
- B. **Right to representation** - Every individual invoking the dispute resolution procedures of this Plan has the right to be represented by a person of his or her choice if such person is available and consents to be a representative. An office employee may accept the responsibilities of representation if it will not unduly interfere with his or her official duties or constitute a conflict of interest, as determined by the representative's appointing officer. A representative who is an office employee shall be free from restraint, interference, coercion, discrimination, and reprisal, and shall have a reasonable amount of official time to accompany, represent, and advise the complainant or the person complained against at any stage in the complaint procedures. The FPDO also has the right to representation.
- C. **Case preparation** - To the extent feasible, every individual invoking the dispute resolution procedures of this Plan may use a reasonable amount of official time to prepare his or her case, so long as it does not unduly interfere with the performance of his or her official duties.
- D. **Extensions of time** - The Employment Dispute Resolution Coordinator ("EDR Coordinator"), the Mediator and the FPD Standing Committee may extend any of the deadlines related to the EDR procedure applicable to their functions set forth in this Chapter for good cause.
- E. **Records** - At the conclusion of formal and informal proceedings under this Plan, all papers, files, and reports will be filed with the EDR Coordinator. No papers, files, or reports relating to a dispute will be filed in any employee's personnel folder, except as necessary to implement an official personnel action.
- F. **Notice** - Every person who is alleged in the complaint to have engaged in acts which violated the plan has the right to have reasonable written notice of the charges made against him or her. All persons involved have the right to reasonable notice of any hearing conducted on a complaint, any action taken, and of their right to have the decision reviewed.

**§ 3 Designation and duties of EDR Coordinator** - The FPD in each FPDO shall designate a person to serve as the EDR Coordinator. The duties of such person shall include the following:

- A. to provide information to the FPD, employees and applicants regarding the rights and protections afforded under this Plan;
- B. to coordinate and organize the procedures and establish and maintain official files pertaining to complaints and other matters initiated and processed under the employment dispute resolution plan;
- C. to coordinate the counseling of individuals in the initial stages of the complaint process, in accordance with Section 5 of this Chapter; and
- D. to collect, analyze, and consolidate statistical data and other information pertaining to the employment dispute resolution process.

**§ 4 Disqualification Provision**- Any person seeking disqualification or recusal of an EDR counselor, mediator, or reviewing official shall promptly submit a written statement to the Chair of the FPD Standing Committee explaining the reasons for the requested disqualification or recusal. In determining whether disqualification or recusal is warranted, the Chair of the FPD Standing Committee shall consider the factors, circumstances and considerations set forth in 28 U.S.C. § 455. If disqualification or recusal is warranted, the Chair of the FPD Standing Committee shall designate another individual to act as the EDR counselor, mediator, or hearing officer. Disqualification or recusal of the EDR counselor, mediator or reviewing official shall not be warranted merely because an FPDO is named as a responding party. However, to avoid possible conflict of interests if the Federal Public Defender is the alleged violator of the Plan's provisions, the Chair of the FPD Standing Committee may designate another party to represent the FPDO in mediation and/or at the formal hearing.

**§ 5 Request for Dismissal** - The FPDO may request dismissal of a complaint at any stage of the process before it is resolved on the basis that it is frivolous, is outside the scope of the Plan, is unduly repetitive of a previous EDR complaint, is the same or substantially the same subject matter as a complaint filed under adverse action or grievance procedures, fails to state a claim upon which relief may be granted, raises allegations that were not advanced in earlier stages of the dispute resolution process, or is otherwise barred by the procedures of this Plan. Such a request will be presented to the Chair of the FPD Standing Committee or designated judicial officer who will, after providing notice to the complainant and an opportunity to respond, grant or deny the request. This decision may include holding a hearing. The complaint will be stayed until the request for dismissal is decided.

## § 6 Counseling

- A. Initiating a proceeding; formal request for counseling** - An employee who believes that his or her rights under Chapters II through VII of this Plan or Sections I through VII of the Model EEO Plan for Federal Public Defenders and Staff have been violated must first request counseling. A sample request for counseling is shown in Appendix B.
- B. Form and manner of requests** - Requests for counseling:
1. are to be submitted to the EDR Coordinator;
  2. must be made in writing; and
  3. must be made within 30 days of the alleged violation or within 30 days of the time the employee becomes aware of the alleged violation.
- C. Procedures**
1. **Who may serve as counselor** - The counseling shall be conducted by the EDR Coordinator, unless the EDR Coordinator is disqualified from serving as counselor under Section 4 of this Chapter, or is otherwise unavailable. In such instances, the FPD Standing Committee shall designate another qualified individual to perform the counseling function. If the dispute involves an alleged violation of this Plan by a judicial officer, the person who conducts the counseling shall be a judicial officer designated by the FPD Standing Committee.
  2. **Purposes of counseling** - The purposes of the counseling shall be to discuss the employee's concerns and elicit information regarding the matter which the employee believes constitutes a violation; to advise the employee of his or her rights and responsibilities and the procedures applicable to the employment dispute resolution process; to evaluate the matter; and to assist the employee in achieving an early resolution of the matter, if possible.
  3. **Confidentiality** - All counseling shall be kept confidential unless the employee agrees in writing to waive confidentiality of the counseling process for the purpose of allowing the designated counselor to contact the employing office or to attempt a resolution of the disputed matter. A written record of all such contacts must be kept by the counselor and made available for review by the affected person(s).



- 4. Form of settlement** - The EDR Coordinator shall reduce to writing any settlement achieved during the counseling process and secure the signatures of the employee, or his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf.
- D. Duration of counseling period** - The period for counseling shall be 30 days (or a shorter period if counseling is concluded at an earlier date), beginning on the date that the request for counseling is received by the EDR Coordinator.
- E. Conclusion of the counseling period and notice** - The EDR Coordinator shall notify the employee in writing of the end of the counseling period. As part of the notice, the EDR Coordinator shall inform the employee of the right and obligation, should the employee choose to pursue his or her claim, to file with the EDR Coordinator a request for mediation in accordance with § 7 of this Chapter.

## **§ 7 Mediation**

- A. Initiation** - Within 15 days after receipt by the employee of notice of the conclusion of the counseling period, the employee may file with the Circuit Executive of the Ninth Circuit (Circuit Executive) a request for mediation. The request must be made in writing and must state the claim(s) presented. Failure to pursue mediation will preclude further processing of the employee's claim under any other provisions of this Chapter. A sample request for mediation is shown in Appendix C.
- B. Procedures**

  - 1. Designation of mediator** - As soon as possible after receiving the request for mediation, the Circuit Executive shall:

    - a. designate a mediator and provide written notice of such designation to all parties in the complaint;
    - b. provide a copy of the request for mediation, a copy of the employing office's EDR Plan, and a copy of the counseling report to the designated mediator; and
    - c. Request that the mediator submit a summary report to the Circuit Executive at the conclusion of mediation. The summary will include the dates of mediation, names of the participants, and whether or not resolution was achieved. A list of issues discussed in mediation, prepared

by the mediator or the parties (or their representatives) and signed, will be attached to the summary report. The summary will not address the merits of the claim and will not disclose any confidential information discussed in the mediation sessions. The sample form in Appendix E may be used to submit this information.

2. **Who may serve as mediator** - Any person with the skills to assist in resolving disputes, except the EDR Coordinator, may serve as a mediator under this Plan. If the complaint alleges that a judicial officer has violated the rights protected by this Plan, the mediator shall be a judicial officer designated by the Chair of the FPD Standing Committee.
  3. **Purpose of mediation** - The mediator shall meet separately and/or jointly with the employee and his or her representative, if any, and the employing office to discuss alternatives for resolving a dispute, including any and all possibilities of reaching a voluntary, mutually satisfactory resolution. All claims must be presented in mediation in order to have them considered at any later step of the EDR process.
  4. **Confidentiality** - Any person or party involved in the mediation process shall not disclose, in whole or in part, any information or records obtained through, or prepared specifically for, the mediation process, except as necessary to consult with the parties or their representatives, and then only with notice to all parties. A written record of all such contacts must be kept and made available for review by the affected person(s). In addition, in the event the employee files a complaint pursuant to Section 7 of this Chapter, the hearing officer shall have access to the record of any claims raised in mediation.
  5. **Form of settlement** - The mediator shall reduce to writing any settlement achieved during the mediation process and secure the signature of the employee, his or her representative, if any, and the member of the employing office who is authorized to enter into settlement on the employing office's behalf. A notice whether settlement was reached will be provided to the Circuit Executive for report purposes.
- C. **Duration of mediation period** - The mediation period shall be 30 days (or a shorter period if mediation is concluded at an earlier date), beginning on the date the request for mediation is received. The employee is required to attend at least one mediation session. Thereafter, he or she may proceed to file a complaint.

- D. Conclusion of mediation period and notice** - If, at the end of the mediation period, the parties have not resolved the matter that forms the basis of the request for mediation, the mediator shall provide the employee, the representative, if any, and the employing office with written notice that the mediation period has concluded. A copy of this notice shall be sent to the EDR Coordinator who, in turn shall inform the employee of his or her right to file a complaint under § 8 of this Chapter.

## **§ 8 Complaint, review and hearing**

- A. Complaint**- Not later than 15 days after receiving notice of the end of the mediation period, the employee may file a complaint under the procedures set out in this section. The complaint shall be in writing, shall identify the complainant and all involved parties and individuals, and shall set forth a short and plain statement of the complainant's claim and the relief or remedy being sought. The respondent shall be the employing office which would be responsible for redressing, correcting or abating the violation(s) alleged in the complaint. No individual shall be named as a respondent in the complaint. A complaint form is shown in Appendix D. It is available from the Federal Public Defender and the EDR Coordinator. Complainants may use alternative written formats at their option.

- 1. Complaints by support staff employees** - Support staff employees and applicants for support staff positions shall file their complaints with the Federal Public Defender.

If the complaint is based on actions or decisions by the Federal Public Defender, it shall be referred to the Chair of the FPD Standing Committee to hear the matter or to appoint a designee to hear the complaint in question. A copy shall be provided to the FPDO and to the EDR Coordinator.

- 2. Complaints by the Federal Public Defender** - Federal Public Defenders and applicants for that position shall file their complaints with the Chair of the FPD Standing Committee.

Formal complaints against the FPD Standing Committee by the Federal Public Defender or applicant for that position which are based on the actions or decisions of the FPD Standing Committee shall be referred to the Chief Circuit Judge for appointment of a designee to perform the functions of the FPD Standing Committee with respect to the complaint in question.

3. The FPDO has the right to respond to the complaint. This response should be submitted to the Chair of the FPD Standing Committee or designated reviewing official within 15 days of receipt of the complaint.

## **B. Review of pleadings**

1. **Reviewing official** - Upon receipt of a complaint by a support staff employee, the Federal Public Defender will review the complaint, or if the complaint is based on actions or decisions by the Federal Public Defender, the FPD Standing Committee or its designee will review the complaint. If the complaint is filed by the Federal Public Defender, the Chair of the FPD Standing Committee or his/her designee will review the complaint. If the Federal Public Defender's complaint is based on actions or decisions of the FPD Standing Committee, a designee of the chief judge will review the complaint.
2. **Review procedures** - After notice to the complainant and an opportunity to respond, the reviewing official may dismiss in writing any complaint that is found to be frivolous, unduly repetitive of a previous complaint, that fails to state a claim upon which relief may be granted, ~~or~~ that makes claims that were not advanced in mediation, or that is otherwise barred from consideration under the provisions of this Plan. The written notice of dismissal of the complaint will be sent to all parties, including the employing office and the EDR Coordinator. The notice will include a statement regarding the complainant's right to appeal the dismissal to the Executive Committee of the Judicial Council of the Ninth Circuit. A copy of the appeal procedures will be provided to the complainant.
3. **Safety assessment** - Where a complaint of discriminatory harassment (including sexual harassment) in the workplace is involved, the reviewing official shall assess immediately whether the nature of the harassment allegations affects the physical safety of the complainant and whether removal from the premises or relocation of any person from the work area involved is necessary to protect any person's physical safety.<sup>1</sup>

## **C. Hearing procedures**

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<sup>1</sup>While such instances are rare, there may be occasions where the nature of the harassment in the workplace is so aggressive and threatening that prompt action is required. The EDR Coordinator, with the concurrence of the Federal Public Defender if possible, shall seek the assistance of court security personnel or use other appropriate means to alleviate the threat to physical safety.

1. **Hearing officer** - If the reviewing official does not dismiss the complaint under the preceding subsection, the reviewing official, acting as the hearing officer, shall hold a hearing on the merits of the complaint unless he or she determines that no material factual dispute exists.
2. **Specific provisions** - The hearing officer may provide for such discovery and investigation as is necessary. In general, the hearing officer shall determine the time, place, and manner of conducting the hearing. However, the following specific provisions shall apply to hearings conducted under this Section:
  - a. the hearing shall be commenced no later than 60 days after the filing of the complaint;
  - b. the complainant and the head of the office against which the complaint has been filed must receive written notice of the hearing; such notice shall also be provided to the individual alleged to have violated rights protected by this Plan.
  - c. at the hearing, the complainant will have the rights to representation, to present evidence on his or her behalf, and to cross-examine adverse witnesses; the employing office will have the rights to present evidence on its behalf and to cross-examine adverse witnesses;
  - d. the Federal Rules of Evidence need not be followed, but may be used as a guide;
  - e. a verbatim record of the hearing must be kept and shall be the sole official record of the proceeding;
  - f. in reaching his or her decision, the hearing officer shall be guided by judicial and administrative decisions under the laws related to Chapters II through VII of this Plan, Sections I through VII of the Model EEO Plan, and by decisions of the Judicial Council of the Ninth Circuit under Section 8 of this Chapter;
  - g. remedies may be provided in accordance with Section 9 of this Chapter where the hearing officer finds that the complainant has established by a preponderance of the evidence that a substantive right protected by this Plan has been violated;
  - h. the final decision of the hearing officer must be issued in writing not later than 30 days after the conclusion of the hearing; and

- i. all parties, or any aggrieved individual, shall have the right to written notice of any action taken as a result of a hearing.

**§ 9 Review of decision** - A party or individual aggrieved by a final decision of the hearing officer, or by a summary dismissal of the complaint, may petition for review of that decision to the Executive Committee of the Judicial Council of the Ninth Circuit, under procedures established by the Judicial Council. Any review will be based on the record created by the hearing officer, and shall be affirmed if supported by substantial evidence. A petition for review must be received in the offices of the Executive Committee of the Judicial Council within 30 days<sup>2</sup> of the date of the final decision of the hearing officer or summary dismissal of the complaint. (See Appendix F for “Procedures for Review of EDR Hearing Officer Decision by the Executive Committee of the Judicial Council of the Ninth Circuit.”)

## **§ 10 Remedies**

- A. Where hearing officers acting pursuant to § 8 or 9 of this Plan find that a substantive right protected by this Plan or the Model EEO Plan has been violated, they may order a necessary and appropriate remedy. A remedy may be directed at correcting a past violation, prospectively insuring compliance with the rights protected by the Plans, or both. A remedy shall be tailored as closely as possible to the specific violation involved.
- B. Remedies which may be provided to successful complainants under this Plan include, but are not limited to:
  1. placement of an employee or applicant in a position previously denied;
  2. placement in a comparable alternative position;
  3. reinstatement to a position from which previously removed;
  4. prospective promotion to a position;
  5. priority consideration for a future promotion or position;
  6. back pay and associated benefits, including attorney's fees, where the statutory criteria of the Back Pay Act, 5 U.S.C. § 5596, are satisfied;
  7. records modification and/or expungement;
  8. "equitable" relief, such as temporary stays of adverse actions;

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<sup>2</sup>Per “*Procedures for Review of the EDR Hearing Officer Decision by the Executive Committee of the Judicial Council of the Ninth Circuit*,” approved by the Judicial Council of the Ninth Circuit in May 2000.

9. granting of family and medical leave; and
10. accommodation of disabilities through the purchase of specialized equipment or the restructuring of duties and work hours.

C. Remedies which are *not* legally available include:

1. payment of attorney's fees (except as authorized under the Back Pay Act);
2. compensatory damages; and
3. punitive damages.

**§ 11 Record of final decisions** - The conclusion of the reviewing panel in any final decisions reached in accordance with the provisions of § 9 of this Chapter shall be made available to the public from the Office of the Circuit Executive upon written request. Only in the event the panel determines that all or portions of the entire decision should be made public shall additional portions of the decision be made available to the public. The reviewing panel, in the interests of justice and of fairness to the parties, may determine not to make available to the public the conclusion of any final decision if public disclosure would compromise the integrity or legitimate confidentiality of the parties or the court, or to protect a party or person from annoyance, embarrassment, oppression, undue burden or expense, or for any other reason that the administration of justice may require.

**§ 12 Election of remedies**- If an employee or an employee representative files an appeal of an adverse action or a grievance in addition to a complaint under this Plan concerning the same or substantially the same subject matter, the employee must elect either (a) the EDR Plan or (b) the grievance/adverse action appeal procedures under which the complaint is to be processed. An employee may not utilize both (a) and (b). Similarly, if a complaint has already been processed under one of these procedures (i.e., the grievance/adverse action appeal procedure or the procedures in this Plan), it may not be the subject of a complaint under the other.

**§ 13 Determining Time Periods** - The word "days" in all filing and other time periods specified in this plan shall mean calendar days, except that if the deadline date falls on a Saturday, Sunday or holiday, the deadline shall be extended to the following Monday or court business day respectively.

**§ 14 Annual Report**- The EDR Coordinator will prepare an annual report for the fiscal year, indicating:

1. The number and type of alleged violations for which counseling was conducted.

2. The number and type of alleged violations for which mediation was conducted.

3. The number and type of complaints filed;

4. The number and type of hearings conducted;

5. The number and type of final decisions rendered reflecting the number for which some relief was granted.

6. With respect to all the data supplied in items 1 through 5 above, the allegations or complaints shall be reported according to the Chapter(s) of the EDR Plan involved and, with respect to allegations or complaints under Chapter II, according to the type(s) of discrimination alleged.



## REQUEST FOR COUNSELING UNDER EDR PLAN

Submitted Under the Procedures of the Employment Dispute Resolution Plan for Employees  
in the Office of the Federal Public Defender

Prior to completing this form, please refer to the Employment Dispute Resolution  
Plan for your court unit. Please complete this form legibly.

1. Full Name of Person Requesting Counseling \_\_\_\_\_

2. Mailing Address \_\_\_\_\_  
\_\_\_\_\_

3. Home Phone(\_\_\_\_\_) \_\_\_\_\_ Work Phone(\_\_\_\_\_) \_\_\_\_\_

4. If you are an FPD employee, state the following:

Unit in which employed \_\_\_\_\_

Job Title \_\_\_\_\_

5. Name and address of the office from which you seek resolution of your dispute.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

6. Date(s) of alleged incident or decision giving rise to this dispute: \_\_\_\_\_

7. Please summarize the actions or occurrences giving rise to this dispute. (If insufficient space, use the  
reverse side or an attachment)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8. Are you willing to waive confidentiality in order to permit the counselor to contact the employing  
office or to attempt a resolution of the disputed matter? **G** yes **G** no

9. What corrective action do you seek in this matter?

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This request for counseling is submitted by:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Name of Counselor to whom submitted: \_\_\_\_\_

Counselor's Signature \_\_\_\_\_

Date of Receipt: \_\_\_\_\_

REQUEST FOR MEDIATION UNDER EDR PLAN

Submitted Under the Procedures of the Employment Dispute Resolution Plan for Employees in the Office of the Federal Public Defender

Prior to completing this form, please refer to the Employment Dispute Resolution Plan for your court unit. Please complete this form legibly.

Please attach a copy of the REQUEST FOR COUNSELING FORM filed in connection with this matter.

1. Full Name of Person Requesting Mediation\_\_\_\_\_

2. If any of the information supplied in the REQUEST FOR COUNSELING UNDER EDR PLAN filed in connection with this matter is no longer accurate, please note the number of the entry on the request for counseling form to be changed, and state the change(s) you wish to make:

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

3. Date counseling was initiated \_\_\_\_\_

4. Date of receipt of the notice of conclusion of counseling \_\_\_\_\_

5. Name of person who provided counseling \_\_\_\_\_

This request for mediation is submitted by:

_____	_____
Signature	Date

Name of Person to whom submitted: \_\_\_\_\_

Signature of recipient \_\_\_\_\_ Date of receipt:\_\_\_\_\_

**COMPLAINT UNDER EDR PLAN**

Filed Under the Procedures of the Employment Dispute Resolution Plan for Employees in the Office of the Federal Public Defender

Prior to completing this form, please refer to the Employment Dispute Resolution Plan for your court unit. Please complete this form legibly.

1. Full Name of Person Filing Complaint\_\_\_\_\_
2. Mailing Address\_\_\_\_\_  
\_\_\_\_\_
3. Home Phone(\_\_\_\_)\_\_\_\_\_Work Phone(\_\_\_\_)\_\_\_\_\_
4. If you are a court employee, state the following:  
Court Unit in which employed\_\_\_\_\_  
Job Title\_\_\_\_\_
5. Name and address of the Employing Office against whom this complaint is filed  
(under the terms of the EDR Plan, all complaints must be filed against an  
"Employing Office", not an individual): \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
6. Identify the Chapter(s) of the EDR Plan under which your complaint is being filed.  

**G** Chapter II- Equal Employment Opportunity & Anti-Discrimination Rights

**Q** Race

**Q** Color

**Q** Religion

**Q** Gender/Sex (includes sexual harassment)

**Q** National Origin

**Q** Age

**Q** Disability

**Q** Sexual Orientation

  

**G** Chapter III- Family and Medical Leave Rights

  

**G** Chapter IV- Worker Adjustment and Retraining Notification Rights

  

**G** Chapter V- Employment and Reemployment Rights of Members of  
the Uniformed Services

  

**G** Chapter VI- Occupational Safety and Health Protections

  

**G** Chapter VII- Polygraph Tests

- [illegible]

[Please attach a copy of any documents that relate to your complaint, such as an application form, resume, letters, notices of discipline or termination, etc..]

12. What corrective action do you seek from your complaint?

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13. Do you have an attorney or any other person who represents you in this matter?

**G** Yes

**G** No

If yes, please provide the following information concerning that person:

Name 

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Address 

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Work Phone(

---

) Fax(

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)

I affirm that the information provided in this complaint is true and correct to the best of my knowledge.

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Signature

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Date

**Sample Record of Mediation  
Employment Dispute Resolution Procedures  
Ninth Circuit**

**Date Request for Mediation Received:** \_\_\_\_\_

**Received By:** \_\_\_\_\_

**Date Mediator Assigned:** \_\_\_\_\_

**Name of Mediator:** \_\_\_\_\_

**Date (s) of Mediation:** \_\_\_\_\_

**Place of Mediation:** \_\_\_\_\_

**Participants in Mediation:** \_\_\_\_\_

\_\_\_\_\_

**Issues Addressed:** \_\_\_\_\_

\_\_\_\_\_

**Remedies Requested By Claimant:** \_\_\_\_\_

\_\_\_\_\_

**Proposal By Employing Office:** \_\_\_\_\_

\_\_\_\_\_

**For Employing Office:** \_\_\_\_\_  
Name Signature Date

**Accepted By Claimant:** \_\_\_\_\_  
Name Signature Date

**Not Accepted By Claimant:** \_\_\_\_\_  
Name Signature Date

**Mediator:** \_\_\_\_\_  
Name Signature Date

**Procedures for Review of EDR Hearing Officer Decision by the Executive Committee of the Judicial Council of the Ninth Circuit**

**I. Scope of the Rules**

These rules govern procedures for petitioning for review of a decision, or summary dismissal, of an Employment Dispute Resolution (“EDR”) Plan complaint rendered by the chief judge or designated judicial officer of the court involved (“Hearing Officer”). Such review is conducted by the Executive Committee of the Judicial Council of the Ninth Circuit (“Executive Committee”).

**II. Filing of Petition for Review**

- A. *Filing the Petition for Review* -- A party aggrieved by a final decision of the Hearing Officer or by summary dismissal of a complaint, may petition for review of that decision or summary dismissal by filing a petition for review to which is attached a copy of the decision of the Hearing Officer (or a copy of the summary dismissal).
- B. *Form of Petition and Supporting Arguments*-- The petition shall be in accordance with Form 1 shown in Appendix A. Included in the petition or as an attachment to the petition shall be a statement, not to exceed 10 pages in length ( 8 ½ x 11 white paper, double-spaced, single-sided) setting forth the basis for the petition and all arguments and information supporting the petition. The petition must be filed with the Executive Committee in a timely manner as set forth in Section III below.
- C. *Serving the Petition for Review*— The petitioning party must serve the petition on the Executive Committee by having it delivered to the Circuit Executive at the following address:

Office of the Circuit Executive  
Assistant Circuit Executive- EDR Plan  
P.O. Box 193939  
San Francisco, CA 94119  
Fax (415) 556-6179

Parcel Delivery:  
  
95 Seventh Street  
San Francisco, CA 94103

Simultaneously, a copy of the petition (and all attachments thereto) must be served on the opposing party, and proof of such service shall be included with the petition filed with the Executive Committee.

**III. Filing Deadlines**

- A. *Time for Filing a Petition for Review*- A petition for review must be submitted to the Executive Committee no later than 30 days following the date of the final decision of the Hearing Officer or following the date of a summary dismissal of the complaint.
- B. *Requests for Extension of Time*- The Executive Committee may extend the time to file a petition for review and for any other filing specified in these procedures, provided the request is received no later than the required filing date, and provided the petitioner shows good cause or excusable neglect.
- C. *Determining Time Periods*- The word “days” in all filing deadlines in these procedures shall mean calendar days, except that if the deadline date occurs on a Saturday, Sunday or holiday, the deadline shall be extended to the next following Monday or court business day respectively.

#### **IV. Consideration by the Executive Committee**

- A. *General*- All reviews will be conducted by the members of the Executive Committee, and shall be based on the decision of the Hearing Officer or the summary dismissal of a complaint and any documents submitted by the parties in response to the directive of the Executive Committee as outlined below.
- B. *Scope of Record and Documents to be Considered*- Within 20 days following receipt of the petition for review, the Executive Committee shall notify the parties concerning what, if any, additional information, i.e., record (e.g. hearing transcript), documents and/or briefs, may be submitted for its consideration. Unless notified by the Executive Committee of its request for additional information, neither party is to submit further information.
- C. *Oral Argument* - Oral argument will normally not be permitted, and only if specifically ordered but may be ordered by the Executive Committee. Either party may request such argument in writing filed within 7 days following filing of the petition as part of the petition (in the case of the party filing the petition) or ( in the case of the Respondent) in a letter submitted no later than 7 days from receipt of the petition, setting forth the specific reasons why such argument is necessary, and why adequate argument cannot be made in written form. If granted, oral argument, may, at the sole discretion of the Executive Committee, be conducted via teleconference using video and/or audio technology.
- D. *Standard of Review*-The decision or summary dismissal of the Hearing Officer shall be affirmed if supported by substantial evidence.
- E. *Summary Disposition*- If at any time prior to the final submission of the case for review, the Executive Committee determines that the basis(es) of the request for review are so insubstantial as not to justify further proceedings, the court may issue an appropriate dispositive order.
- F. *Form of Final Review*- The Executive Committee shall issue its decision in writing.

#### **APPENDIX OF FORMS**

Form 1. **Petition for Review to the Executive Committee of the Judicial Council of the Ninth Circuit from a EDR Hearing Officer's Decision.**

[see next page for form]



Name of Petitioning Party or Counsel

Address

Telephone #

Fax #

Name of Court in Which Hearing Officer's Decision Was Issued

A.B., Petitioner	)	Petition for Review of Decision in
	)	(or Summary Dismissal of) Employment
	)	Dispute Resolution Plan Complaint
	)	
•	)	
	)	
C.D., Respondent	)	

Notice is hereby given that (name the party petitioning for review), (petitioners) in the above named case, hereby petition for review to the Executive Committee of the Judicial Council for the Ninth Circuit from the decision (or summary dismissal of the complaint) by Judge (name of Hearing Officer) entered in this matter action on the \_\_\_\_\_ day of \_\_\_\_\_, (20\_\_).

Attached to this petition is a copy of the Hearing Officer's Decision (or summary dismissal of the complaint).

The basis(es) of this petition for review is (reason why review is requested -- this basis(es) may be included as an attachment).

Submitted this \_\_\_\_ day of \_\_\_\_\_, 20\_\_